No. 22,423

United States Court of Appeals

FOR THE NINTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

v.

WESTERN BUILDING MAINTENANCE COMPANY AND SERVICE AND MAINTENANCE EMPLOYEES UNION, LOCAL 399, BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO,

Respondents.

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

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BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

JURISDICTION

This case is before the Court upon petition of the National Labor Relations Board to enforce its order issued against respondents (hereafter called the "Company" and the "Union") on January 10, 1967, following proceedings under Section

10(c) of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. Sec. 151, *et seq.*). [1] The Board's decision and order (R. 61-90, 117-118) [2] are reported at 162 NLRB No. 73. This Court has jurisdiction over the proceedings under Section 10(e) of the Act, since the unfair labor practices occurred at Los Angeles, California, within this judicial circuit, where the Company is engaged in the business of providing building maintenance services. [3]

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[1] Pertinent provisions of the Act are set forth *infra* in Appendix A.

[2] References to the pleadings and decision and order of the Board, the Trial Examiner's recommended decision and order and other pertinent papers reproduced as Volume I, pleadings, are designated "R". References to portions of the stenographic transcript reproduced pursuant to the Rules of this Court are designated "Tr." "G.C. Ex." refers to the General Counsel's exhibits. References preceding a semicolon are to the Board's findings; those following are to supporting evidence.

[3] The complaint originally named some 64 employers, in addition to the Company, generally referred to as maintenance contractors or contractors, as Parties in Interest. During the course of the hearing, counsel for the General Counsel moved to amend the complaint by striking the names of some 47 of the Parties in Interest, and all allegations applicable to said parties (R. 62-63; Tr. 31-34, 101-102). Based on the ground that, as to some of these parties, the volume of their business did not conform to the Board's jurisdictional standards, and that, as to others, they had not participated in the unfair labor practices, the motion was granted without objection (R. 62-63; Tr. 34, 102). The remaining Parties in Interest are as follows:

Affiliated Maintenance Co.; All American Maintenance Co., Inc.; Allstate Building Maintenance Co.; American Building Maintenance Co.; B & G Janitor Service; J. E. Benton Management Corp.; Building Service Company of Los Angeles; California Building Maintenance Company; Coast Building Maintenance Co.; County Building Maintenance Company, Inc.; Esquire Building Maintenance Company; Los Angeles Building Maintenance Company, Inc.; Neilson Enterprises, Inc.; Royal Building Maintenance; Santa Ana Building Maintenance Company; Security Maintenance Services, Inc.; Southland Maintenance Co.; Terminal Building Maintenance; Western Building Maintenance Co.

As shown *infra* p. 10, the Board's order against the Union requires reimbursement of certain dues paid by employees of the Parties in Interest.

STATEMENT OF THE CASE

I. THE BOARD'S FINDINGS OF FACT

The Board found that by engaging in the practice of informing applicants for employment or newly-hired employees that they must join the Union immediately, by furnishing newly hired employees with union-membership applications and dues checkoff authorizations, and by deducting from the wages of such employees union dues during the first 30 days of employment and remitting said dues to the Union, the Company unlawfully assisted the Union in violation of Section 8(a)(2) and (1) of the Act. The Board further found that by jointly engaging and participating in a hiring procedure, whereby job applicants or newly-hired employees were required to execute union-membership applications and dues checkoff authorizations prior to the expiration of the first 30 days of their employment, the Company and the Union violated Section 8(a)(1), (2) and (3), and Section 8(b)(2) and (1)(A) of the Act, respectively. The evidence upon which the Board based its findings is summarized below.

A. Background

Each of the employer parties, including the Parties in Interest named in the original complaint, is signatory to an identical industry-wide collective bargaining agreement with the Union, which has been in effect since August 1, 1963 (R. 65; Tr. 35; G.C. Exh. 3). The agreement contains conventional union-security provisions requiring members of the Union in good standing on the effective date of the agreement to remain members, and all employees hired thereafter to become members after 30 days of employment or 30 days after the effective date of the agreement, whichever is later. Also

included is a provision for a checkoff of union dues and initiation fees upon proper written authorization by the employees (R. 65; GCX 3, see especially Article III Section 1 and Article IV Section 1). [4]

B. The Union's Unlawful Implementation of the Contract

Purportedly in implementation of these provisions, on about November 26, 1963, the Union issued a mimeographed bulletin on its letterhead, addressed "TO ALL MAINTENANCE CONTRACTORS." The bulletin carried a notice at the top, "IMPORTANT: – PLEASE SEE THAT THIS INFORMATION REACHES YOUR PAYROLL DEPARTMENT!!" and began: "There seems to be some confusion among the various maintenance contractors as to the proper dues deductions. We are sending this letter to clarify the matter." The bulletin explained the obligations of the contractors under the check-off provisions of the contract, and continued, in relevant part,

> "4. In addition, employees who have worked for a Union employer less than 30 days shall be considered *probationary members* and dues shall be deducted for said probationary members at the rate of *25¢ for each day of work,* up to a maximum of the regular monthly dues for the classification in which said probationary members are working.
>
> "5. The *dues* and *initiation fees* for regular members shall be deducted in accordance with

[4] The General Counsel did not contend, nor did the Board find, that these provisions of the contract were unlawful (R. 65, 73).

> the provisions of Article IV – Check Off – of the standard Maintenance Contractors Agreement." (Emphasis in original) (R. 67; GCX 4).

Copies of the bulletin were mailed by the Union to all maintenance contractors who were parties to the standard collective bargaining agreement (R. 68; Tr. 45).

On June 1, 1964, the Union issued another bulletin to the maintenance contractors (R. 68, Tr. 46), bearing the legend at the top: "VERY IMPORTANT: PLEASE SEE THAT THE FOLLOWING INFORMATION REACHES YOUR SUPERVISORS AND PAYROLL DEPARTMENT." There followed a schedule of initiation fees and dues for employees in various job classifications, with further detailed instructions, including the following:

> *"PROBATIONARY DUES:*
>
> Anyone in authority hiring any employee must advise these employees that they will be charged at the rate of *twenty-five (25¢)* for each day worked during the first 30 days of employment, up to a maximum of $4.50 for female employees or $5.00 for male employees. Employees working after the 30th day following the beginning of their employment shall become regular members of the Union, and the Initiation Fees shall be deducted with the first month's dues, in accordance with Check-Off procedure – Acticle IV – Section "B" of the Standard Maintenance Contractors Agreement. . ." (Emphasis in original.)

The bulletin closed:

> *"COMMENT:*
> YOU ARE FULLY RESPONSIBLE TO ADHERE TO ALL THE ABOVE CONDITIONS." (R. 68; GCX 5)

The Union, in several instances, supplemented its written edicts with oral representations to contractors, reminding them that union dues during the first 30 days of employment of newly-hired employees were 25 cents a day (R. 76; GCX 8(a) and 8(b), para. 14). Additionally, the Union policed its dues deduction policy by conducting audits of the payroll records of several maintenance contractors and submitting invoices covering dues not deducted or remitted as specified in its various directives (R. 76, 19; GCX 8(a) and 8(b) para. 14). Deductions were in fact made by the employers pursuant to these invoices *(Ibid.)*.

On September 8, 1965, after the filing of the charge and before the issuance of the complaint in this case, the Union issued another directive to all maintenance contractors covered by the collective bargaining agreement countermanding its dues policy as set forth in the November 26 and June 1 bulletins (R. 68-69; Tr. 47-48; GCX 6). The bulletin stated in pertinent part:

> "(4) Effective immediately, no Employer shall follow the practice of deducting 25¢ for each days work during the first 30 days of employment of new employees.
>
> * * *
>
> "(6) The Employer shall present to each new employee at the time of hiring, the statement which is attached to these procedures together with a copy of the Agreement and an

> application card for Local 399 and check off authorization card. The employer shall not in any way require the new employee to sign the application or check off card as a condition of hiring the new employees. No representative of the Employer shall in any way coerce, force or require the new employee to sign the authorization dues check off card. . ." (R. 68-69; GCX 6). [5]

Nevertheless, the Union notified some maintenance contractors that they were still liable for newly-hired employees' dues which had accrued during the first 30 days of their employment prior to the issuance of the September 8 bulletin (R. 77; Tr. 113-114). None of the contractors remitted to the Union any dues allegedly owing pursuant to such notice *(Ibid.)*.

C. The Company's Hiring Procedure

Under the Company's hiring procedures, the job applicant was usually interviewed by a receptionist, who furnished him with an employment application. After preliminary screening, the completed application was submitted to any one of a number of supervisors. Successful applicants were generally told that employment was "contingent" upon joining the Union (R. 72; Tr. 20; GCX 8(a) Para. 1) and were provided

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[5] Attached to this bulletin were new forms for membership application and payroll deduction authorization, as well as a new form (entitled "NOTICE TO EMPLOYEES") which informed them of the existence of a labor contract with the particular maintenance contractor, providing for union-security, but advised that: "You are not required to join until after 30 days from the date of your hiring; however, you have the right to voluntarily and of your own choice, join the Union prior to the 30 day period" (R. 69; GCX 6).

with a set of forms to complete. These forms included a Withholding Exemption Certificate; an Application for Employment; a Personnel Check Sheet; and an "Employment Package," consisting of a three-part perforated form, numbered consecutively 1 to 3, and designated respectively, "APPLICATION FOR MEMBERSHIP," "PAYROLL DEDUCTION AUTHORIZATION," and "DESIGNATION OF BENEFICIARY" (R. 71, 72; Tr. 20-21, GCX 8(a) Para. 1, GCX 2).[6] At the top of the "Employment Package" form appeared the legend, "ALL THREE PARTS OF THIS FORM MUST BE COMPLETELY FILLED OUT BY EMPLOYEE." Underneath the heading, "APPLICATION FOR MEMBERSHIP," were the words, "To be Returned to Union Office, DUES DEPT. Accompanied with Initiation Fee and/or First Month's Dues" (R. 72; GCX 2). Nothing was said to newly-hired employees about having 30 days' time to submit these forms (R. 71; GCX 9), nor were they told *when* union dues deductions would actually be made (R. 72; Tr. 20; GCX 8(a) Para 1). Rather, newly-hired employees were told that completion of the Exemption Certificate and Payroll Deduction Authorization forms was a prerequisite to their getting paid (R. 71; GCX 9). and in practice, therefore, all of the forms were generally completed and returned to the Company "immediately" (R. 71; GCX 9). Thereafter, the Company, beginning with the first day of employment, deducted 25 cents per day from the new employee's wages, the total deductions during the first 30 days not exceeding an amount equal to the regular monthly dues. The dues of an employee starting work on the first of the month were remitted to the Union on the 20th of the month. When the employee had

---

[6] The entire "Employment Package" form, prepared by the Union, was supplied in quantities to all maintenance contractors or employers by the Union (R. 72; Tr. 49-50).

completed 30 days of employment, the Company then deducted one-half of his initiation fee, together with regular monthly dues in the pay period following the initial 30 days. The remaining one-half of the initiation fee, together with dues for that month was deducted 60 days from the first day of employment. (R. 71-72; GCX 9.) [7]

II. THE BOARD'S CONCLUSIONS AND ORDER

The Board, in agreement with the Trial Examiner, found that the Company violated Section 8(a)(2) and (1) of the Act by unlawfully assisting the Union in obtaining employee signatures to union membership applications and dues checkoff authorizations as a condition of employment. The Board further found that by jointly engaging in a practice whereby newly-hired employees were required to join the Union and pay dues sooner than is permissible under the 30-day statutory grace period, the Company and the Union respectively violated Section 8(a)(1), (2), and (3) and 8(b)(2) and (1)(A) of the Act. (R. 82-83.)

---

[7] The hiring procedures of all the Parties in Interest were substantially similar to those related above, with the exception of Allstate Building Maintenance Co., Coast Building Maintenance Co., and Royal Building Maintenance. At Allstate Building Maintenance Co., applicants for employment were told that they would not be required to join the Union until after 30 days, and that no dues would be deducted during the first 30 days of their employment (R. 75; GCX 8(a)). At Coast Building Maintenance Co., applicants for employment were informed that they would not be required to join the Union during the first 30 days, but that membership dues, at the rate of 25 cents a day, would be deducted during the first 30 days of their employment (R. 75; GCX 8(a)). At Royal Building Maintenance, applicants were informed that they would be required to join the Union, but that no dues would be deducted from their wages until after 30 days of employment, However, regardless of what was said to job applicants and newly-hired employees concerning union membership and the payment of dues, all of the Parties in Interest deducted dues on behalf of the Union during the first 30 days of employment (R. 75, 76; GCX 8(a) and 8(b)).

The Board's order directs respondents to cease and desist from participating in the checkoff of union dues for employees pursuant to membership-dues-checkoff authorizations unlawfully obtained from the employees prior to the 30-day statutory period and from, in any like or related manner, restraining with employees in the exercise of their Section 7 rights, and to post the usual notices. The Board further ordered the respondents jointly and severally to reimburse all the Company's employees for dues illegally exacted from them during a period commencing 6 months prior to the time the charge was filed in this case and ending on September 8, 1965, the time of the Union's corrective action. Additionally, the Union was ordered to reimburse the employees of the Parties in Interest for dues illegally exacted during this same period. (R. 83-90).

ARGUMENT

SUBSTANTIAL EVIDENCE ON THE RECORD AS A WHOLE SUPPORTS THE BOARD'S FINDINGS THAT THE COMPANY AND UNION VIOLATED SECTION 8(a)(1), (2) and (3) AND 8(b)(1)(A) AND (2) OF THE ACT RESPECTIVELY BY MAINTAINING AN ARRANGEMENT WHEREBY NEW EMPLOYEES WERE REQUIRED TO JOIN THE UNION AND AUTHORIZE THE CHECK-OFF OF DUES AS A CONDITION OF EMPLOYMENT PRIOR TO THE EXPIRATION OF THE THIRTY DAY STATUTORY GRACE PERIOD.

Section 7 of the Act guarantees employees the right to refrain from joining a labor organization, except as such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a)(3). This latter section permits an employer and a union representing a majority of his employees to enter into a union security agreement requiring union membership as a condition of employment "on or after the thirtieth

day following the beginning of such employment." It is a violation of Section 8(a)(3) for an employer to discriminate with respect to the hire and tenure of employees by disregarding the statutory restrictions concerning union security agreements. Section 8(b)(2) in relevant part prohibits the union from causing or attempting to cause an employer to violate Section 8(a)(3). Rounding out the statutory scheme, Section 8(a)(1) and 8(b)(1)(A) bar employers and unions from restraining and coercing employees in the exercise of their Section 7 rights, including their right to refrain from joining unions except under the special situation described above.

The Board found that although the union security agreement between the Company and Union was lawful on its face and purported to protect employees against discrimination during the statutory 30-day grace period, the parties, in disregard of their agreement, engaged in an arrangement which required employees to become Union members and to execute dues checkoff authorizations before the expiration of the statutory grace period. It is clear, in view of the express statutory command that employees be given 30 days after hiring within which to become union members, that the Company and Union have violated the Act by denying the employees the protection guaranteed by the Act. See, *N.L.R.B. v. Campbell Soup Co. and Butchers Union Local 127, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO,* 378 F.2d 259 (C.A. 9), *cert. denied,* 389 U.S. 900; *N.L.R.B. v. Cadillac Wire Corp., and Local 810, International Brotherhood of Teamsters,* 290 F.2d 261, 262 (C.A. 2); *N.L.R.B. v. Industrial Rayon Corp. and Local 600, International Union of Operating Engineers,* 297 F.2d 62, 63 (C.A. 6); *Lakeland Bus Lines, Inc. v. N.L.R.B.,* 278 F.2d 888, 890 (C.A. 3); *N.L.R.B. v. Gottfried Baking Co.,* 210 F.2d 772, 779-780 (C.A. 2); *N.L.R.B. v. Associated Machines, Inc.,* 239 F.2d

858 (C.A. 6). [8] Furthermore, it is clear that in determining whether a violation of this nature has been committed, the Board is empowered to look beyond the terms of the agreement which, while "not violative of the Act on its face" was carried out in a discriminatory manner. *N.L.R.B. v. International Association of Heat and Frost Insulators,* 261 F.2d 347, 349-350 (C.A. 1). In such circumstances, the Board's inquiry is mainly a factual one and "the unfair labor practice can be found from a procedure which shows a practice or understanding" and which results in depriving employees of their statutory rights. *N.L.R.B. v. Local 420, United Association of Journeymen,* 239 F.2d 327, 330 (C.A. 3); see also *N.L.R.B. v. International Union of Operating Engineers, Little Rock, Local 382-382A,* 279 F.2d 951, 955 (C.A. 8); *N.L.R.B. v. Construction Specialties Co.,* 208 F.2d 170, 173 (C.A. 10).

The undisputed facts in this case clearly establish such an infringement upon the statutory rights of employees. The record shows that the Company's hiring procedure, viewed as a totality, pressured newly-hired employees to join the Union and to execute dues checkoff authorizations prior to the expiration of the statutory grace period. Thus, the Company informed

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[8] It should be noted that even after the expiration of the 30-day statutory grace period, "the Act permits employees freedom to choose the method of payment, either by checkoff or by direct payment to the Union [and] an employer may not interfere with this freedom of choice," *Sterling Precision Corp., Instrument Division,* 131 NLRB 1229, 1235; *N.L.R.B. v. Seine and Line Fishermen's Union of San Pedro,* 374 F.2d 974 (C.A. 9), *cert. denied,* 389 U.S. 913, enforcing *Seine and Line Fishermen's Union of San Pedro, et al.,* 136 NLRB 1, 11, 12 and *Paul Biazevich et al. d/b/a M V "Liberator" et al.,* 136 NLRB 13, 22; *Confectionery and Tobacco Drivers and Warehousemen's Union v. N.L.R.B.,* 312 F.2d 108, 114-115 (C.A. 2); *American Screw Company,* 122 NLRB 485, 488-489. *Cf. Felter v. Southern Pacific Co.,* 359 U.S. 326.

job applicants that employment was contingent upon joining the Union and routinely provided them with employment forms to be completed, including a union membership application and payroll deduction authorization form. A sense of compulsion with respect to the completion of these forms was conveyed to them not only by the nature of the forms and the instructions imprinted thereon, but also by the Company's explicit requirement that the Exemption Certificate and Payroll Deduction Authorization forms be completed and returned before an employee was paid. Nor did the Company attempt to alter this impression, for nothing was said to newly-hired employees about having 30 days' time to join the Union. Such a hiring procedure, unqualified by any reference to the statutory grace period, clearly brings pressure to bear on the employee to join the Union immediately and, therefore, is inimical to the congressional purpose in providing for the 30-day period. [9]

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[9] The legislative history of the Act discloses that the purpose of the grace period was to give an employee 30 days to decide whether he likes his job well enough to be willing to incur the additional expense of initiation fees and dues. House Report No. 245 on H.R. 3020, 80th Cong., 1st Sess., House of Representatives, p. 9 (1947), 1 Legislative History of the Labor Management Relations Act 1947, p. 300 (Govt. Print. Off., 1948); 93 Cong. Rec. 3556, 1 Leg. Hist. 737.

The Company's conduct is no less unlawful because certain employees successfully resisted its effort to require them to join the Union during the 30-day statutory grace period; for other employees, who may not be aware of their rights under the Act, may be constrained to join the Union and execute checkoff authorizations under the misapprehension that they are required to do so in order to obtain employment. *Cf. N.L.R.B. v. Brown-Dunkin Co.*, 287 F.2d 17, 18 (C.A. 10); *N.L.R.B. v. McBride Construction Co.*, 274 F.2d 124, 127 (C.A. 10); *N.L.R.B. v. Hill & Hill Truck Line*, 266 F.2d 883, 885 (C.A. 5).

The Company's role in the unlawful hiring procedure furnishes ample support for the Board's conclusion that the Company violated Section 8(a)(2) of the Act. Section 8(a)(2) makes it unlawful for an employer to "contribute financial or other support" to a labor organization. It cannot be seriously disputed that the Company's actions during the hiring process in telling employees, in effect, that they were required to join the Union, in securing signatures for Union application and authorization forms, and in collecting Union dues during and for the 30-day statutory grace period, constitute "support" within the meaning of Section 8(a)(2). Courts have long recognized that the advantages flowing to a union from an unlawful union security arrangement are considered potent support within the meaning of that section. *N.L.R.B. v. Campbell Soup Co. and Butchers Union Local 127, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO,* 378 F. 2d 259 (C.A. 9), *cert. denied,* 389 U.S. 900; *N.L.R.B. v. L. Ronney & Sons,* 206 F.2d 730, 734 (C.A. 9), *cert. denied,* 346 U.S. 937, *rehearing denied,* 347 U.S. 914; *N.L.R.B. v. Gottfried Baking Co.,* 210 F.2d 772, 780-781 (C.A. 2); *N.L.R.B. v. Broderick Wood Products Co.,* 261 F.2d 548, 550 (C.A. 10); *N.L.R.B. v. Trosch,* 321 F.2d 692, 697 (C.A. 4), *cert. denied,* 375 U.S. 993; *N.L.R.B. v. Associated Machines, Inc.,* 239 F.2d 858 (C.A. 6).

The Union's complicity in and responsibility for the unlawful hiring procedure are manifest upon the undisputed facts on the record. The Union's issuance of directives to all maintenance contractors on November 26, 1963, and June 1, 1964, in addition to similar oral representations, and its attempts to compel compliance with its policy as stated therein by conducting audits of the payroll records of the maintenance contractors and by submitting bills for dues not deducted by employees during the first 30 days of employment, amply

support the Board's conclusion that the Union violated Section 8(b)(2) and (1)(A) of the Act by causing employers with whom it had contracts to discriminate in regard to the hire and tenure of employees.

CONCLUSION

For the reasons stated, it is respectfully submitted that a decree should issue enforcing the Board's order in full. [10]

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February 1968

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[10] The fact that respondents have discontinued the unlawful arrangement is no defense to a petition for enforcement of the Board's order. *N.L.R.B. v. Mexia Textile Mills,* 339 U.S. 563; *N.L.R.B. v. Trimfit of California,* 211 F.2d 206, 208 (C.A. 9). Moreover, as shown *supra p.* 10, that order contains a reimbursement requirement as well as cease-and desist provisions.

CERTIFICATE

The undersigned certifies that he has examined the provisions of Rules 18 and 19 of this Court and in his opinion the tendered brief conforms to all requirements.

Marcel Mallet-Prevost
Assistant General Counsel
National Labor Relations Board

APPENDIX A

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C., Secs. 151, *et seq.)* are as follows:

RIGHTS OF EMPLOYEES

Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective barbaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3).

UNFAIR LABOR PRACTICES

Sec. 8(a). It shall be an unfair labor practice for an employer—

> (1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;
>
> (2) to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: Provided, That subject to rules and regulations made and published by the Board pursuant to section 6, an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay;

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: Provided, That nothing in this Act, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in section 8(a) of this Act as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later, (i) if such labor organization is the representative of the employees as provided in section 9(a), in the appropriate collective-bargaining unit covered by such agreement when made, and (ii) unless following an election held as provided in section 9(e) within one year preceding the effective date of such agreement, the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to rescind the authority of such labor organization to make such an agreement: Provided further, That no employer shall justify any discrimination against an employee for non-membership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds

for believing that membership was denied or terminated for reasons other than the failure of the employees to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

* * *

(b) It shall be an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7: Provided, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein;

* * *

(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a)(3) or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

* * *

APPENDIX B

Pursuant to Rule 18.2(f) of the Rules of the Court:
(Numbers are to pages of the reporter's transcript)

Board Case Nos. 21-CA-6651
21-CB-2573

GENERAL COUNSEL'S EXHIBITS

Number	Identified	Received
1(a) – 1(m)	13	13
2	20	23
3	41	42
4	44	45
5	46	46
6	47	47
7(a)	102	102
7(b)	102	102
8(a)	106	106
8(b)	106	106
9	106	109